

AMENDED IN ASSEMBLY MAY 5, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1265

Introduced by Assembly Member Benoit

February 21, 2003

An act to amend Sections 6738 and 8729 of the Business and Professions Code, and to amend ~~Section 16101~~ *Sections 16101, 16956, and 16959* of the Corporations Code, relating to engineering services.

LEGISLATIVE COUNSEL'S DIGEST

AB 1265, as amended, Benoit. Engineers and land surveyors: limited liability partnerships.

(1) Existing law, the Professional Engineers Act and the Professional Land Surveyors' Act, provides for the licensing and regulation of engineers and land surveyors. Existing law authorizes an engineer and a land surveyor to practice within the scope of his or her licensure as a sole proprietor, a partnership, a firm, or a corporation.

This bill would additionally authorize an engineer and a land surveyor to practice within the scope of his or her licensure as a limited liability partnership.

(2) Existing law defines a "foreign limited liability partnership" and a "registered limited liability partnership" as a partnership formed pursuant to an agreement governed by another state and licensed by that state to engage in the practice of architecture, public accountancy, or the practice of law.

This bill would authorize a "foreign limited liability partnership" and a "registered limited liability partnership" to engage in the practice of engineering and the practice of land surveying.

(3) Existing law requires every limited liability partnership and foreign limited liability partnership to register with the Secretary of State before transacting business in the state. Existing law requires limited liability partnerships and foreign limited liability partnerships practicing architecture, accountancy, and law to maintain security for claims arising out of acts, errors, or omissions made against the partnership.

This bill would additionally require limited liability partnerships and foreign limited liability partnerships practicing as professional engineers and professional land surveyors to maintain security for claims arising out of acts, errors, or omissions made against the limited liability partnership or the foreign limited liability partnership.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6738 of the Business and Professions
2 Code is amended to read:

3 6738. (a) This chapter does not prohibit one or more civil,
4 electrical, or mechanical engineers from practicing or offering to
5 practice within the scope of their registration, civil, electrical, or
6 mechanical engineering as a sole proprietorship, partnership,
7 limited liability partnership, firm, or corporation (hereinafter
8 called business), if all of the following requirements are met:

9 (1) A civil, electrical, or mechanical engineer currently
10 registered in this state is an owner, part owner, or officer in charge
11 of the engineering practice of the business.

12 (2) All engineering plans, specifications, reports, and
13 documents are prepared under the responsible charge of a
14 registered engineer in the appropriate branch of professional
15 engineering.

16 (3) The business name of a California business shall only
17 contain the name of any person who is registered by the board in
18 a branch of professional engineering, a licensed land surveyor, a
19 licensed architect, or a geologist registered under the Geologist
20 Act (Chapter 12.5 (commencing with Section 7800)). Any offer,
21 promotion, or advertisement by the business which contains the
22 name of any individual in the business, other than by use of the
23 name of an individual in the business name, shall clearly and

1 specifically designate the license or registration discipline of each
2 individual named.

3 (b) An out-of-state business with a branch office in this state
4 shall meet the requirements of subdivision (a) and shall have a part
5 owner or officer who is in charge of the engineering work in the
6 branch in this state, who is registered in this state, and who is
7 physically present at the branch office in this state on a regular
8 basis. However, the name of the business may contain the name of
9 any person not registered in this state if that person is appropriately
10 registered in another state. Any offer, promotion, or advertisement
11 which contains the name of any individual in the business, other
12 than by use of the names of the individuals in the business name,
13 shall clearly and specifically designate the license or registration
14 discipline of each individual named.

15 (c) A fictitious name may be used for an engineering business
16 if (1) the name does not conflict with paragraph (3) of subdivision
17 (a) requiring that names used in the business name shall be
18 appropriately registered individuals, and (2) an organization
19 record form is filed with the board.

20 (d) A nonregistered person may also be a part owner or an
21 officer of a civil, electrical, or mechanical engineering business if
22 the requirements of subdivision (a) are met.

23 (e) This chapter does not prevent an individual or business
24 engaged in any line of endeavor other than the practice of civil,
25 electrical, or mechanical engineering from employing or
26 contracting with a registered civil, electrical, or mechanical
27 engineer to perform the respective engineering services incidental
28 to the conduct of business.

29 (f) This section shall not prevent the use of the name of any
30 business engaged in rendering civil, electrical, or mechanical
31 engineering services, including the use by any lawful successor or
32 survivor, which lawfully was in existence on December 31, 1987.
33 However, the business is subject to paragraphs (1) and (2) of
34 subdivision (a), and the business shall file an organization record
35 form with the board as designated by board rule.

36 (g) A business engaged in rendering civil, electrical, or
37 mechanical engineering services may use in its name the name of
38 a deceased or retired person provided all of the following
39 conditions are satisfied:

1 (1) The person's name had been used in the name of the
2 business, or a predecessor in interest of the business, prior to and
3 after the death or retirement of the person.

4 (2) The person shall have been an owner, part owner, or officer
5 of the business, or an owner, part owner, or officer of the
6 predecessor in interest of the business.

7 (3) The person shall have been licensed as a professional
8 engineer, or a land surveyor, or an architect, or a geologist, (A) by
9 the appropriate licensing board if that person is operating a place
10 of business or practice in this state, or (B) by the applicable state
11 board in the event no place of business existed in this state.

12 (4) The person, if retired, has consented to the use of the name
13 and does not permit the use of the name in the title of another
14 professional engineering business in this state during the period of
15 the consent. However, the retired person may use his or her name
16 as the name of a new or purchased business if it is not identical in
17 every respect to that person's name as used in the former business.

18 (5) The business shall be subject to the provisions of
19 paragraphs (1) and (2) of subdivision (a).

20 (6) The business files a current organization record form with
21 the board.

22 (h) This section does not affect the provisions of Sections
23 6731.2 and 8726.1.

24 SEC. 2. Section 8729 of the Business and Professions Code
25 is amended to read:

26 8729. (a) This chapter does not prohibit one or more licensed
27 land surveyors or civil engineers registered in this state prior to
28 1982 (hereinafter called civil engineers) from practicing or
29 offering to practice within the scope of their licensure, land
30 surveying as a sole proprietorship, partnership, limited liability
31 partnership, firm, or corporation (hereinafter called business), if
32 the following conditions are satisfied:

33 (1) A land surveyor or civil engineer currently licensed in the
34 state is an owner, part owner, or officer in charge of the land
35 surveying practice of the business.

36 (2) All maps, plats, reports, descriptions, or other documents
37 are prepared under the responsible charge of a land surveyor or
38 civil engineer.

39 (3) The business name of a California business shall only
40 contain the name of a person licensed by the board as a land

1 surveyor or registered by the board in any year as a civil engineer.
2 Any offer, promotion, or advertisement by the business which
3 contains the name of any individual in the business, other than by
4 use of the name of the individual in the business name, shall clearly
5 and specifically designate the license or registration discipline of
6 each individual named.

7 (b) An out-of-state business with a branch office in this state
8 shall meet the requirements of subdivision (a) and shall have a part
9 owner or officer who is in charge of the land surveying work in this
10 state, who is licensed in this state, and who is physically present
11 at the branch office in this state on a regular basis. However, the
12 name of the business may contain the name of a person not licensed
13 in this state, if that person is appropriately licensed in another state.
14 Any offer, promotion, or advertisement which contains the name
15 of any individual in the business, other than by use of the name of
16 the individual in the business name, shall clearly and specifically
17 designate the license or registration discipline of each individual
18 named.

19 (c) A fictitious name may be used for a land surveying business
20 if (1) the name does not conflict with the provisions of paragraph
21 (3) of subdivision (a) requiring that a name used in the business
22 name shall be that of an appropriately licensed individual, and (2)
23 an organization record is filed with the board.

24 (d) A nonregistered person may also be a part owner or an
25 officer of a land surveying business if the conditions of subdivision
26 (a) are satisfied.

27 (e) This chapter does not prevent an individual or business
28 engaged in any line of endeavor, other than the practice of land
29 surveying, from employing or contracting with a licensed land
30 surveyor or a registered civil engineer to perform the respective
31 land surveying services incidental to the conduct of business.

32 (f) This section shall not prevent the use of the name of any
33 business engaged in rendering land surveying services, including
34 the use by any lawful successor or survivor, which lawfully was
35 in existence on June 1, 1941. However, the business is subject to
36 the provisions of paragraphs (1) and (2) of subdivision (a) and the
37 business shall file an organization record form with the board as
38 designated by board rule.

(g) A business engaged in rendering land surveying services may use in its name the name of a deceased or retired person if the following conditions are satisfied:

(1) The person's name had been used in the name of the business, or a predecessor in interest of the business, prior to the death or retirement of the person.

(2) The person shall have been an owner, part owner, or officer of the business, or an owner, part owner, or officer of the predecessor in interest of the business.

(3) The person shall have been licensed as a land surveyor or a civil engineer by the board, if operating a place of business or practice in this state, or by an applicable state board in the event no place of business existed in this state.

(4) The person, if retired, has consented to the use of the name and does not permit the use of the name in the title of another land surveying business in this state during the period of that consent, except that a retired person may use his or her name as the name of a new or purchased business, if that business is not identical in every respect to that person's name as used in the former business.

(5) The business shall be subject to paragraphs (1) and (2) of subdivision (a).

(6) The business files a current organization record form with the board.

(h) This section does not affect Sections 6731.2 and 8726.1.

SEC. 3. Section 16101 of the Corporations Code is amended to read:

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) "Business" includes every trade, occupation, and profession.

(2) "Debtor in bankruptcy" means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) (A) “Foreign limited liability partnership” means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, the practice of engineering, the practice of land surveying, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(5) “Licensed person” means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(6) (A) “Registered limited liability partnership” means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or

1 authorized to provide professional limited liability partnership
2 services in a jurisdiction or jurisdictions other than this state, (ii)
3 is licensed under the laws of the state to engage in the practice of
4 architecture, practice of public accountancy, the practice of
5 engineering, the practice of land surveying, or the practice of law,
6 or (iii)(I) is related to a registered limited liability partnership that
7 practices public accountancy or, to the extent permitted by the
8 State Bar, practices law or is related to a foreign limited liability
9 partnership and (II) provides services related or complementary to
10 the professional limited liability partnership services provided by,
11 or provides services or facilities to, that registered limited liability
12 partnership or foreign limited liability partnership.

13 (B) For the purposes of clause (iii) of subparagraph (A), a
14 partnership is related to a registered limited liability partnership or
15 foreign limited liability partnership if (i) at least a majority of the
16 partners in one partnership are also partners in the other
17 partnership, or (ii) at least a majority in interest in each partnership
18 hold interests in or are members of another person, other than an
19 individual, and each partnership renders services pursuant to an
20 agreement with that other person, or (iii) one partnership, directly
21 or indirectly through one or more intermediaries, controls, is
22 controlled by, or is under common control with, the other
23 partnership.

24 (7) “Partnership” means an association of two or more persons
25 to carry on as coowners a business for profit formed under Section
26 16202, predecessor law, or comparable law of another jurisdiction,
27 and includes, for all purposes of the laws of this state, a registered
28 limited liability partnership, and excludes any partnership formed
29 under Chapter 2 (commencing with Section 15501) or Chapter 3
30 (commencing with Section 15611).

31 (8) “Partnership agreement” means the agreement, whether
32 written, oral, or implied, among the partners concerning the
33 partnership, including amendments to the partnership agreement.

34 (9) “Partnership at will” means a partnership in which the
35 partners have not agreed to remain partners until the expiration of
36 a definite term or the completion of a particular undertaking.

37 (10) “Partnership interest” or “partner’s interest in the
38 partnership” means all of a partner’s interests in the partnership,
39 including the partner’s transferable interest and all management
40 and other rights.

(11) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(12) “Professional limited liability partnership services” means the practice of architecture, the practice of public accountancy, *the practice of engineering*, *the practice of land surveying*, or the practice of law.

(13) “Property” means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(14) “State” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(15) “Statement” means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(16) “Transfer” includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(17) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2007.

SEC. 4. Section 16956 of the Corporations Code is amended to read:

16956. (a) At the time of registration pursuant to Section 16953, in the case of a registered limited liability partnership, and Section 16959, in the case of a foreign limited liability partnership, and at all times during which those partnerships shall transact intrastate business, every registered limited liability partnership and foreign limited liability partnership, as the case may be, shall be required to provide security for claims against it as follows:

(1) For claims based upon acts, errors, or omissions arising out of the practice of public accountancy, a registered limited liability partnership or foreign limited liability partnership providing accountancy services shall comply with one, or pursuant to subdivision (b) some combination, of the following:

1 (A) Maintaining a policy or policies of insurance against
2 liability imposed on or against it by law for damages arising out
3 of claims in an amount for each claim of at least one hundred
4 thousand dollars (\$100,000) multiplied by the number of licensed
5 persons rendering professional services on behalf of the
6 partnership; however, the total aggregate limit of liability under
7 the policy or policies of insurance for partnerships with fewer than
8 five licensed persons shall not be less than five hundred thousand
9 dollars (\$500,000), and for all other partnerships is not required to
10 exceed five million dollars (\$5,000,000) in any one designated
11 period, less amounts paid in defending, settling, or discharging
12 claims as set forth in this subparagraph. The policy or policies may
13 be issued on a claims-made or occurrence basis, and shall cover:
14 (i) in the case of a claims-made policy, claims initially asserted in
15 the designated period, and (ii) in the case of an occurrence policy,
16 occurrences during the designated period. For purposes of this
17 subparagraph, “designated period” means a policy year or any
18 other period designated in the policy that is not greater than 12
19 months. The impairment or exhaustion of the aggregate limit of
20 liability by amounts paid under the policy in connection with the
21 settlement, discharge, or defense of claims applicable to a
22 designated period shall not require the partnership to acquire
23 additional insurance coverage for that designated period. The
24 policy or policies of insurance may be in a form reasonably
25 available in the commercial insurance market and may be subject
26 to those terms, conditions, exclusions, and endorsements that are
27 typically contained in those policies. A policy or policies of
28 insurance maintained pursuant to this subparagraph may be
29 subject to a deductible or self-insured retention.

30 Upon the dissolution and winding up of the partnership, the
31 partnership shall, with respect to any insurance policy or policies
32 then maintained pursuant to this subparagraph, maintain or obtain
33 an extended reporting period endorsement or equivalent provision
34 in the maximum total aggregate limit of liability required to
35 comply with this subparagraph for a minimum of three years if
36 reasonably available from the insurer.

37 (B) Maintaining in trust or bank escrow, cash, bank certificates
38 of deposit, United States Treasury obligations, bank letters of
39 credit, or bonds of insurance or surety companies as security for
40 payment of liabilities imposed by law for damages arising out of

1 all claims in an amount of at least one hundred thousand dollars
2 (\$100,000) multiplied by the number of licensed persons
3 rendering professional services on behalf of the partnership;
4 however, the maximum amount of security for partnerships with
5 fewer than five licensed persons shall not be less than five hundred
6 thousand dollars (\$500,000), and for all other partnerships is not
7 required to exceed five million dollars (\$5,000,000). The
8 partnership remains in compliance with this section during a
9 calendar year notwithstanding amounts paid during that calendar
10 year from the accounts, funds, Treasury obligations, letters of
11 credit, or bonds in defending, settling, or discharging claims of the
12 type described in this paragraph, provided that the amount of those
13 accounts, funds, Treasury obligations, letters of credit, or bonds
14 was at least the amount specified in the preceding sentence as of
15 the first business day of that calendar year. Notwithstanding the
16 pendency of other claims against the partnership, a registered
17 limited liability partnership or foreign limited liability partnership
18 shall be deemed to be in compliance with this subparagraph as to
19 a claim if within 30 days after the time that a claim is initially
20 asserted through service of a summons, complaint, or comparable
21 pleading in a judicial or administrative proceeding, the partnership
22 has provided the required amount of security by designating and
23 segregating funds in compliance with the requirements of this
24 subparagraph.

25 (C) Unless the partnership has satisfied subparagraph (D), each
26 partner of a registered limited liability partnership or foreign
27 limited liability partnership providing accountancy services, by
28 virtue of that person's status as a partner, thereby automatically
29 guarantees payment of the difference between the maximum
30 amount of security required for the partnership by this paragraph
31 and the security otherwise provided in accordance with
32 subparagraphs (A) and (B), provided that the aggregate amount
33 paid by all partners under these guarantees shall not exceed the
34 difference. Neither withdrawal by a partner nor the dissolution and
35 winding up of the partnership shall affect the rights or obligations
36 of a partner arising prior to withdrawal or dissolution and winding
37 up, and the guarantee provided for in this subparagraph shall apply
38 only to conduct that occurred prior to the withdrawal or dissolution
39 and winding up. Nothing contained in this subparagraph shall
40 affect or impair the rights or obligations of the partners among



1 themselves, or the partnership, including, but not limited to, rights
2 of contribution, subrogation, or indemnification.

3 (D) Confirming, pursuant to the procedure in subdivision (c),
4 that, as of the most recently completed fiscal year of the
5 partnership, it had a net worth equal to or exceeding ten million
6 dollars (\$10,000,000).

7 (2) For claims based upon acts, errors, or omissions arising out
8 of the practice of law, a registered limited liability partnership or
9 foreign limited liability partnership providing legal services shall
10 comply with one, or pursuant to subdivision (b) some
11 combination, of the following:

12 (A) Each registered limited liability partnership or foreign
13 limited liability partnership providing legal services shall
14 maintain a policy or policies of insurance against liability imposed
15 on or against it by law for damages arising out of claims in an
16 amount for each claim of at least one hundred thousand dollars
17 (\$100,000) multiplied by the number of licensed persons
18 rendering professional services on behalf of the partnership;
19 however, the total aggregate limit of liability under the policy or
20 policies of insurance for partnerships with fewer than five licensed
21 persons shall not be less than five hundred thousand dollars
22 (\$500,000), and for all other partnerships is not required to exceed
23 seven million five hundred thousand dollars (\$7,500,000) in any
24 one designated period, less amounts paid in defending, settling, or
25 discharging claims as set forth in this subparagraph. The policy or
26 policies may be issued on a claims-made or occurrence basis, and
27 shall cover (i) in the case of a claims-made policy, claims initially
28 asserted in the designated period, and (ii) in the case of an
29 occurrence policy, occurrences during the designated period. For
30 purposes of this subparagraph, “designated period” means a
31 policy year or any other period designated in the policy that is not
32 greater than 12 months. The impairment or exhaustion of the
33 aggregate limit of liability by amounts paid under the policy in
34 connection with the settlement, discharge, or defense of claims
35 applicable to a designated period shall not require the partnership
36 to acquire additional insurance coverage for that designated
37 period. The policy or policies of insurance may be in a form
38 reasonably available in the commercial insurance market and may
39 be subject to those terms, conditions, exclusions, and
40 endorsements that are typically contained in those policies. A

1 policy or policies of insurance maintained pursuant to this
2 subparagraph may be subject to a deductible or self-insured
3 retention.

4 Upon the dissolution and winding up of the partnership, the
5 partnership shall, with respect to any insurance policy or policies
6 then maintained pursuant to this subparagraph, maintain or obtain
7 an extended reporting period endorsement or equivalent provision
8 in the maximum total aggregate limit of liability required to
9 comply with this subparagraph for a minimum of three years if
10 reasonably available from the insurer.

11 (B) Each registered limited liability partnership or foreign
12 limited liability partnership providing legal services shall
13 maintain in trust or bank escrow, cash, bank certificates of deposit,
14 United States Treasury obligations, bank letters of credit, or bonds
15 of insurance or surety companies as security for payment of
16 liabilities imposed by law for damages arising out of all claims in
17 an amount of at least one hundred thousand dollars (\$100,000)
18 multiplied by the number of licensed persons rendering
19 professional services on behalf of the partnership; however, the
20 maximum amount of security for partnerships with fewer than five
21 licensed persons shall not be less than five hundred thousand
22 dollars (\$500,000), and for all other partnerships is not required to
23 exceed seven million five hundred thousand dollars (\$7,500,000).
24 The partnership remains in compliance with this section during a
25 calendar year notwithstanding amounts paid during that calendar
26 year from the accounts, funds, Treasury obligations, letters of
27 credit, or bonds in defending, settling, or discharging claims of the
28 type described in this paragraph, provided that the amount of those
29 accounts, funds, Treasury obligations, letters of credit, or bonds
30 was at least the amount specified in the preceding sentence as of
31 the first business day of that calendar year. Notwithstanding the
32 pendency of other claims against the partnership, a registered
33 limited liability partnership or foreign limited liability partnership
34 shall be deemed to be in compliance with this subparagraph as to
35 a claim if within 30 days after the time that a claim is initially
36 asserted through service of a summons, complaint, or comparable
37 pleading in a judicial or administrative proceeding, the partnership
38 has provided the required amount of security by designating and
39 segregating funds in compliance with the requirement of this
40 subparagraph.

1 (C) Unless the partnership has satisfied the requirements of
2 subparagraph (D), each partner of a registered limited liability
3 partnership or foreign limited liability partnership providing legal
4 services, by virtue of that person's status as a partner, thereby
5 automatically guarantees payment of the difference between the
6 maximum amount of security required for the partnership by this
7 paragraph and the security otherwise provided in accordance with
8 the provisions of subparagraphs (A) and (B), provided that the
9 aggregate amount paid by all partners under these guarantees shall
10 not exceed the difference. Neither withdrawal by a partner nor the
11 dissolution and winding up of the partnership shall affect the rights
12 or obligations of a partner arising prior to withdrawal or
13 dissolution and winding up, and the guarantee provided for in this
14 subparagraph shall apply only to conduct that occurred prior to the
15 withdrawal or dissolution and winding up. Nothing contained in
16 this subparagraph shall affect or impair the rights or obligations of
17 the partners among themselves, or the partnership, including, but
18 not limited to, rights of contribution, subrogation, or
19 indemnification.

20 (D) Confirming, pursuant to the procedure in subdivision (c),
21 that, as of the most recently completed fiscal year of the
22 partnership, it had a net worth equal to or exceeding fifteen million
23 dollars (\$15,000,000).

24 (3) For claims based upon acts, errors, or omissions arising out
25 of the practice of architecture, *engineering, or land surveying*, a
26 registered limited liability partnership or foreign limited liability
27 partnership providing architectural, *engineering, or land*
28 *surveying* services shall comply with one, or pursuant to
29 subdivision (b) some combination, of the following:

30 (A) Maintaining a policy or policies of insurance against
31 liability imposed on or against it by law for damages arising out
32 of claims in an amount for each claim of at least one hundred
33 thousand dollars (\$100,000) multiplied by the number of licensed
34 persons rendering professional services on behalf of the
35 partnership; however, the total aggregate limit of liability under
36 the policy or policies of insurance for partnerships with fewer
37 persons shall not be less than five hundred thousand dollars
38 (\$500,000), and for all other partnerships is not required to exceed
39 five million dollars (\$5,000,000) in any one designated period,
40 less amounts paid in defending, settling, or discharging claims as

set forth in this subparagraph. The policy or policies may be issued on a claims-made or occurrence basis, and shall cover: (i) in the case of a claims-made policy, claims initially asserted in the designated period, and (ii) in the case of an occurrence policy, occurrences during the designated period. For purposes of this subparagraph, “designated period” means a policy year or any other period designated in the policy that is not greater than 12 months. The impairment or exhaustion of the aggregate limit of liability by amounts paid under the policy in connection with the settlement, discharge, or defense of claims applicable to a designated period shall not require the partnership to acquire additional insurance coverage for that designated period. The policy or policies of insurance may be in a form reasonably available in the commercial insurance market and may be subject to those terms, conditions, exclusions, and endorsements that are typically contained in those policies. A policy or policies of insurance maintained pursuant to this subparagraph may be subject to a deductible or self-insured retention.

Upon the dissolution and winding up of the partnership, the partnership shall, with respect to any insurance policy or policies then maintained pursuant to this subparagraph, maintain or obtain an extended reporting period endorsement or equivalent provision in the maximum total aggregate limit of liability required to comply with this subparagraph for a minimum of three years if reasonably available from the insurer.

(B) Maintaining in trust or bank escrow, cash, bank certificates of deposit, United States Treasury obligations, bank letters of credit, or bonds of insurance or surety companies as security for payment of liabilities imposed by law for damages arising out of all claims in an amount of at least one hundred thousand dollars (\$100,000) multiplied by the number of licensed persons rendering professional services on behalf of the partnership; however, the maximum amount of security for partnerships with fewer than five licensed persons shall not be less than five hundred thousand dollars (\$500,000), and for all other partnerships is not required to exceed five million dollars (\$5,000,000). The partnership remains in compliance with this section during a calendar year notwithstanding amounts paid during that calendar year from the accounts, funds, Treasury obligations, letters of credit, or bonds in defending, settling, or discharging claims of the

1 type described in this paragraph, provided that the amount of those
2 accounts, funds, Treasury obligations, letters of credit, or bonds
3 was at least the amount specified in the preceding sentence as of
4 the first business day of that calendar year. Notwithstanding the
5 pendency of other claims against the partnership, a registered
6 limited liability partnership or foreign limited liability partnership
7 shall be deemed to be in compliance with this subparagraph as to
8 a claim if within 30 days after the time that a claim is initially
9 asserted through service of a summons, complaint, or comparable
10 pleading in a judicial or administrative proceeding, the partnership
11 has provided the required amount of security by designating and
12 segregating funds in compliance with the requirements of this
13 subparagraph.

14 (C) Unless the partnership has satisfied subparagraph (D), each
15 partner of a registered limited liability partnership or foreign
16 limited liability partnership providing architectural, *engineering*,
17 *or land surveying* services, by virtue of that person's status as a
18 partner, thereby automatically guarantees payment of the
19 difference between the maximum amount of security required for
20 the partnership by this paragraph and the security otherwise
21 provided in accordance with subparagraphs (A) and (B), provided
22 that the aggregate amount paid by all partners under these
23 guarantees shall not exceed the difference. Neither withdrawal by
24 a partner nor the dissolution and winding up of the partnership
25 shall affect the rights or obligations of a partner arising prior to
26 withdrawal or dissolution and winding up, and the guarantee
27 provided for in this subparagraph shall apply only to conduct that
28 occurred prior to the withdrawal or dissolution and winding up.
29 Nothing contained in this subparagraph shall affect or impair the
30 rights or obligations of the partners among themselves, or the
31 partnership, including, but not limited to, rights of contribution,
32 subrogation, or indemnification.

33 (D) Confirming, pursuant to the procedure in subdivision (c),
34 that, as of the most recently completed fiscal year of the
35 partnership, it had a net worth equal to or exceeding ten million
36 dollars (\$10,000,000).

37 (b) For purposes of satisfying the security requirements of this
38 section, a registered limited liability partnership or foreign limited
39 liability partnership may aggregate the security provided by it
40 pursuant to subparagraphs (A), (B), (C), and (D) of paragraph (1)

1 of subdivision (a), subparagraphs (A), (B), (C), and (D) of
 2 paragraph (2) of subdivision (a), or subparagraphs (A), (B), (C),
 3 and (D) of paragraph (3) of subdivision (a), as the case may be.
 4 Any registered limited liability partnership or foreign limited
 5 liability partnership intending to comply with the alternative
 6 security provisions set forth in subparagraph (D) of paragraph (1)
 7 of subdivision (a), subparagraph (D) of paragraph (2) of
 8 subdivision (a), or subparagraph (D) of paragraph (3) of
 9 subdivision (a) shall furnish the following information to the
 10 Secretary of State's office, in the manner prescribed in, and
 11 accompanied by all information required by, the applicable
 12 section:

13
 14 TRANSMITTAL FORM FOR EVIDENCING COMPLIANCE WITH
 15 SECTION 16956(a)(1)(D), SECTION 16956(a)(2)(D), OR SECTION
 16 16956(a)(3)(D) OF THE CALIFORNIA CORPORATIONS CODE
 17

18 The undersigned hereby confirms the following:
 19

- 20 1. _____
 21 Name of registered or foreign limited liability partnership
 22
- 23 2. _____
 24 Jurisdiction where partnership is organized
 25
- 26 3. _____
 27 Address of principal office
 28
- 29 4. The registered or foreign limited liability partnership chooses to
 30 satisfy the requirements of Section 16956 by confirming, pursuant to
 31 Section 16956(a)(1)(D), 16956(a)(2)(D), or 16956(a)(3)(D) and
 32 pursuant to Section 16956(c), that, as of the most recently completed
 33 fiscal year, the partnership had a net worth equal to or exceeding ten
 34 million dollars (\$10,000,000), in the case of a partnership providing
 35 accountancy services, fifteen million dollars (\$15,000,000) in the case
 36 of a partnership providing legal services, or ten million dollars
 37 (\$10,000,000), in the case of a partnership providing architectural,
 38 *engineering, or land surveying* services.
 39

1 5. _____
2 Title of authorized person executing this form
3

4 6. _____
5 Signature of authorized person executing this form
6

7 (c) Pursuant to subparagraph (D) of paragraph (1) of
8 subdivision (a), subparagraph (D) of paragraph (2) of subdivision
9 (a), or subparagraph (D) of paragraph (3) of subdivision (a), a
10 registered limited liability partnership or foreign limited liability
11 partnership may satisfy the requirements of this section by
12 confirming that, as of the last day of its most recently completed
13 fiscal year, it had a net worth equal to or exceeding the amount
14 required. In order to comply with this alternative method of
15 meeting the requirements established in this section, a registered
16 limited liability partnership or foreign limited liability partnership
17 shall file an annual confirmation with the Secretary of State's
18 office, signed by an authorized member of the registered limited
19 liability partnership or foreign limited liability partnership,
20 accompanied by a transmittal form as prescribed by subdivision
21 (b). In order to be current in a given year, the partnership form for
22 confirming compliance with the optional security requirement
23 shall be on file within four months of the completion of the fiscal
24 year and, upon being filed, shall constitute full compliance with
25 the financial security requirements for purposes of this section as
26 of the beginning of the fiscal year. A confirmation filed during any
27 particular fiscal year shall continue to be effective for the first four
28 months of the next succeeding fiscal year.

29 (d) Neither the existence of the requirements of subdivision (a)
30 nor the extent of the registered limited liability partnership's or
31 foreign limited liability partnership's compliance with the
32 alternative requirements in this section shall be admissible in court
33 or in any way be made known to a jury or other trier of fact in
34 determining an issue of liability for, or to the extent of, the
35 damages in question.

36 (e) Notwithstanding any other provision of this section, if a
37 registered limited liability partnership or foreign limited liability
38 partnership is otherwise in compliance with the terms of this
39 section at the time that a bankruptcy or other insolvency
40 proceeding is commenced with respect to the registered limited

liability partnership or foreign limited liability partnership, it shall be deemed to be in compliance with this section during the pendency of the proceeding. A registered limited liability partnership that has been the subject of a proceeding and that conducts business after the proceeding ends shall thereafter comply with paragraph (1), (2), or (3) of subdivision (a), in order to obtain the limitations on liability afforded by subdivision (c) of Section 16306.

SEC. 5. Section 16959 of the Corporations Code is amended to read:

16959. (a) (1) Before transacting intrastate business in this state, a foreign limited liability partnership shall comply with all statutory and administrative registration or filing requirements of the state board, commission, or agency that prescribes the rules and regulations governing a particular profession in which the partnership proposes to be engaged, pursuant to the applicable provisions of the Business and Professions Code relating to the profession or applicable rules adopted by the governing board. A foreign limited liability partnership that transacts intrastate business in this state shall within 30 days after the effective date of the act enacting this section or the date on which the foreign limited liability partnership first transacts intrastate business in this state, whichever is later, register with the Secretary of State by submitting to the Secretary of State an application for registration as a foreign limited liability partnership, signed by a person with authority to do so under the laws of the jurisdiction of formation of the foreign limited liability partnership, stating the name of the partnership, the address of its principal office, the name and address of its agent for service of process in this state, a brief statement of the business in which the partnership engages, and any other matters that the partnership determines to include.

(2) Annexed to the application for registration shall be a certificate from an authorized public official of the foreign limited liability partnership's jurisdiction of organization to the effect that the foreign limited liability partnership is in good standing in that jurisdiction, if the laws of that jurisdiction permit the issuance of those certificates, or, in the alternative, a statement by the foreign limited liability partnership that the laws of its jurisdiction of organization do not permit the issuance of those certificates.

1 (b) The registration shall be accompanied by a fee as set forth
2 in subdivision (b) of Section 12189 of the Government Code.

3 (c) The Secretary of State shall register as a foreign limited
4 liability partnership any partnership that submits a completed
5 application for registration with the required fee.

6 (d) The Secretary of State may cancel the filing of the
7 registration if a check or other remittance accepted in payment of
8 the filing fee is not paid upon presentation. Upon receiving written
9 notification that the item presented for payment has not been
10 honored for payment, the Secretary of State shall give a first
11 written notice of the applicability of this section to the agent for
12 service of process or to the person submitting the instrument.
13 Thereafter, if the amount has not been paid by cashier's check or
14 equivalent, the Secretary of State shall give a second written notice
15 of cancellation and the cancellation shall thereupon be effective.
16 The second notice shall be given 20 days or more after the first
17 notice and 90 days or less after the original filing.

18 (e) A partnership becomes registered as a foreign limited
19 liability partnership at the time of the filing of the initial
20 registration with the Secretary of State or at any later date or time
21 specified in the registration and the payment of the fee required by
22 subdivision (b). A partnership continues to be registered as a
23 foreign limited liability partnership until a notice that it is no
24 longer so registered as a limited liability partnership has been filed
25 pursuant to Section 16960 or, if applicable, once it has been
26 dissolved and finally wound up. The status of a partnership
27 registered as a foreign limited liability partnership and the liability
28 of a partner of that foreign limited liability partnership shall not be
29 adversely affected by errors or subsequent changes in the
30 information stated in an application for registration under
31 subdivision (a) or an amended registration or notice under Section
32 16960.

33 (f) The fact that a registration or amended registration pursuant
34 to Section 16960 is on file with the Secretary of State is notice that
35 the partnership is a foreign limited liability partnership and of
36 those other facts contained therein that are required to be set forth
37 in the registration or amended registration.

38 (g) The Secretary of State shall provide a form for a registration
39 under subdivision (a), which shall include the form for confirming
40 compliance with the optional security requirement pursuant to

subdivision (c) of Section 16956. The Secretary of State shall include with instructional materials, provided in conjunction with the form for registration under subdivision (a), a notice that filing the registration will obligate the limited liability partnership to pay an annual tax for that taxable year to the Franchise Tax Board pursuant to Section 17948 of the Revenue and Taxation Code. That notice shall be updated annually to specify the dollar amount of this tax.

(h) A foreign limited liability partnership transacting intrastate business in this state shall not maintain any action, suit, or proceeding in any court of this state until it has registered in this state pursuant to this section.

(i) Any foreign limited liability partnership that transacts intrastate business in this state without registration is subject to a penalty of twenty dollars (\$20) for each day that unauthorized intrastate business is transacted, up to a maximum of ten thousand dollars (\$10,000).

(j) A partner of a foreign limited liability partnership is not liable for the debts or obligations of the foreign limited liability partnership solely by reason of its having transacted business in this state without registration.

(k) A foreign limited liability partnership, transacting business in this state without registration, appoints the Secretary of State as its agent for service of process with respect to causes of action arising out of the transaction of business in this state.

(l) “Transact intrastate business” as used in this section means to repeatedly and successively provide professional limited liability partnership services in this state, other than in interstate or foreign commerce.

(m) Without excluding other activities that may not be considered to be transacting intrastate business, a foreign limited liability partnership shall not be considered to be transacting intrastate business merely because its subsidiary or affiliate transacts intrastate business, or merely because of its status as any one or more of the following:

(1) A shareholder of a domestic corporation.

(2) A shareholder of a foreign corporation transacting intrastate business.

(3) A limited partner of a foreign limited partnership transacting intrastate business.

1 (4) A limited partner of a domestic limited partnership.

2 (5) A member or manager of a foreign limited liability
3 company transacting intrastate business.

4 (6) A member or manager of a domestic limited liability
5 company.

6 (n) Without excluding other activities that may not be
7 considered to be transacting intrastate business, a foreign limited
8 liability partnership shall not be considered to be transacting
9 intrastate business within the meaning of this subdivision solely by
10 reason of carrying on in this state any one or more of the following
11 activities:

12 (1) Maintaining or defending any action or suit or any
13 administrative or arbitration proceeding, or effecting the
14 settlement thereof or the settlement of claims or disputes.

15 (2) Holding meetings of its partners or carrying on any other
16 activities concerning its internal affairs.

17 (3) Maintaining bank accounts.

18 (4) Maintaining offices or agencies for the transfer, exchange,
19 and registration of the foreign limited liability partnership's
20 securities or maintaining trustees or depositories with respect to
21 those securities.

22 (5) Effecting sales through independent contractors.

23 (6) Soliciting or procuring orders, whether by mail or through
24 employees or agents or otherwise, where those orders require
25 acceptance without this state before becoming binding contracts.

26 (7) Creating or acquiring evidences of debt or mortgages, liens,
27 or security interest in real or personal property.

28 (8) Securing or collecting debts or enforcing mortgages and
29 security interests in property securing the debts.

30 (9) Conducting an isolated transaction that is completed within
31 180 days and not in the course of a number of repeated transactions
32 of a like nature.

33 (o) A person shall not be deemed to be transacting intrastate
34 business in this state merely because of its status as a partner of a
35 registered limited liability partnership or a foreign limited liability
36 company whether or not registered to transact intrastate business
37 in this state.

38 (p) The Attorney General may bring an action to restrain a
39 foreign limited liability partnership from transacting intrastate
40 business in this state in violation of this chapter.

1 (q) Nothing in this section is intended to, or shall, augment,
2 diminish, or otherwise alter existing provisions of law, statutes, or
3 court rules relating to services by a California architect, *California*
4 *professional engineer, California professional land surveyor,*
5 California public accountant, or California attorney in another
6 jurisdiction, or services by an out-of-state architect, *out-of-state*
7 *professional engineer, out-of-state professional land surveyor,*
8 out-of-state public accountant, or out-of-state attorney in
9 California.

O

